

No. 9(1)81-8Lab./1097.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Maheswari and Company (P) Ltd., Mathura Road, Faridabad:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 140 of 1976.

between

SHRI MOHINDER SINGH, WORKMAN
AND THE MANAGEMENT OF M/S
MAHESWARI AND COMPANY (P)
LTD., MATHURA ROAD, FARIDABAD.

Present:—

Shri S. R. Gupta, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD/756-A-74/23087, dated 6th July, 1976, the Governor of Haryana referred the following dispute between the management of M/s. Maheswari and Company (P) Ltd., Mathura Road, Faridabad and its workman Shri Mohinder Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Mohinder Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following

issues were framed on 7th December, 1977:—

1. Whether Shri Mohinder Singh is a workman as defined under section 2(s) of the Industrial Disputes Act, 1947 ?
2. If Issue No. 1 is proved in affirmative whether the termination of services of Shri Mohinder Singh was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the workman, who examined himself as his own witness and also examined Shri Sarup Singh and Madan Lal ex-workmen as WW-1 to WW-3 and closed his case. Then the case was fixed for the evidence of the management, who examined Shri Sudershan Maheshwari, Director of the management as MW-1 and closed their case. Arguments were heard. I now give my finding issueswise:—

ISSUE NO. 1:

WW-1 stated that he was appointed in May, 1968, as a Die Fitter at Calcutta. The factory was shifted to Faridabad in the year 1970 so he also came to Faridabad. He had to perform the work of a Die Fitter by doing drilling, boring etc. and to cut iron. At the time of his coming to Faridabad he was getting Rs. 581 plus Rs. 20 as house rent allowance. In cross-examination he stated that 4-5 months prior to his dismissal his pay was raised from Rs. 475 to Rs. 581. Ex. M-1 to M-14 did not bear his signature. He was the only Die Fitter in the factory. He was not working on any other job than that of Die Fitter. Other workmen were doing other job such as cutting iron etc. The work of Die Fitter included boring filling, drilling, cutting etc. WW-2 stated that the concerned workman was a Fitter doing work with his own hands. He was not a Supervisor. He could not issue gate pass, nor sanctioned increments. In cross-examination he stated that he left services in 1972. WW-3 also corroborated the statement of WW-2. He left his service in November, 1971.

MW-1 stated that the workers were issued attendance cards on which there attendance is marked. The staff member signs attendance register. The concerned employee used to sign staff attendance register. Staff members and Supervisor are not given card. Shri Mohinder Singh was the Incharge of sinker section. He was promoted to this post,—vide Ex. M-15. His duty was to control the department to appoint or remove or grant leave and to supervise production of his department. Ex. MW-1, MW-19 were leave applications recommended by him. Whenever leave was recommended by him it was generally sanctioned. Shri Mohinder Singh used to interview the appointees. Appointment letter bear the initials of the concerned employee. Ex. MW-22 to MW-29 were appointment letters. He recommended increments also which were Ex. M-30 to M-33. The resignation was also recommended by him. His general view was taken into consideration. Resignations were Ex. MW-34 to MW-38. MW-35 bear the initials of Shri Mohinder Singh with a note "Mohinder Singh discussed with me" in red circle is in my hand. It does not bear the signature of any officer, therefore it was accepted by Shri Mohinder Singh alone. MW-39 is also signed by him at point A. MW-40 to MW-53 are recommended by him and bear his initials. He was getting the highest salary in sinker section. Shri Badalia was Technical Commercial Manager. Shri Mohinder Singh was not doing work with his own hands. In cross-examination he stated that Shri Mohinder Singh had not been designated in the attendance register as Section Incharge. He identified the initials of Shri Mohinder Singh on Ex. MW-1 to MW-53 because he had initiated on some of the papers in his presence but could not identify which were those papers. He could not produce any letter by which Shri Mohinder Singh appointed any workman. The same was in the case of suspension or dismissal or imposition of punishment. He could not say in whose hands were Ex. MW-30 to MW-34. He remember that discussions actually took place with Shri Mohinder Singh as

endorsed in circle on Ex. MW-35 and then the resignation was accepted. There was no boring work in the factory, however, there was drilling and filing work. He denied the suggestion that work of filing, drilling etc. was done by Shri Mohinder Singh.

The representative for the workman argued that the employee was not employed in a supervisory capacity as given in para 1 of the written statement, rather he was doing physical work with his own hands, the position taken by him in the rejoinder. He also referred to documents Ex. M-1 to M-14 and stated that these documents were denied by the employee. He cited 1977 Volume II LLN page 517 in which it was held:—

"Managerial or administrative functions require a person to control the work of others. It does not mean that a person, who does some work and gets assistants for doing that work, can be described as a person who is working in a managerial or administrative capacity. Similarly, a person cannot be said to be working in a supervisory capacity merely because he has to supervise persons who help him in doing the work he himself has to perform."

On the other hand the representative for the management argued that the workman was drawing a salary of Rs. 581 and was heading sinker department of the company in a supervisory capacity. As such he was not a workman as defined by section 2(s) of the Industrial Dispute Act. It is into evidence that the workmen of the company were issued attendance card, whereas the staff members used to initial attendance register. The original attendance register was placed on record in which this employee is shown at serial No. 1 in sinker section. The rank column of the register is blank in most of the pages. The representative

for the management cited 1968 Lab. I.C. page 326 in which it is held as under:—

Duties of nature of distribution of work and implying assigning of duties such as making daily technical report of work performed in whole shift and arranging for relieving staff in place of absentees and taking attendance of shift staff as supervisory.

He also cited 1970 II LLJ page 590 (S.C.) in which it is held as under:—

“A person employed not to do any skilled or unskilled manual, clerical or technical or supervisory work, held, not a workman. The test of substantial work performed by the concerned employee, held, should be applied to find out as to whether the employee is employed to do skilled or unskilled manual, clerical, technical or supervisory work. A person technically qualified, held, could be employed mainly in a supervisory capacity in view of the technical knowledge or qualifications possessed by him. Such person so, employed, held, would not be a ‘workman’ if he draws salary of more than Rs. 500 per month. Applying that test certain categories of employees in the instant case, held, covered by the definition and certain categories of employees, held, not covered by the definition of ‘workman’ in Section 2(s) of the Act.”

It was further held that it could not be contended that wherever technical man is employed in an industry, it must be held that he is employed to do technical work irrespective of the manner in which and the occasions on which the technical knowledge of such person is brought to use or that when a technical employee

even gives advice or guides other workmen it must be held that he is doing technical work and not supervisory work.

The management produced Ex. M-15 letter addressed to Shri Mohinder Singh Die Fitter which runs thus:—

“The management is pleased to inform you that you have been promoted as ‘FORMAN’ with effect from 1st July, 1973. You have been made incharge of your Section and you have all the powers to control your department.”

This is dated 1st July, 1973. Leave applications Ex. M-1 to M-14 were produced by the management to show that the employee took decision in recommending or not recommending leave. All these applications are initialed by this employee. Ex. MW-1 to MW-19 are other leave applications which bear the same signature but have not been admitted by the workman. Ex. MW-20 to MW-29 are application forms with appointment letters of workmen bearing initials of the employee though not admitted by him. Documents Ex. MW-30 and MW-31 are recommendation for annual increment of various workmen by Shri Mohinder Singh. Ex. MW-34 to MW-38 are resignation letters bearing initials of this employee whereas Ex. MW-39 is a report from this employee regarding unsatisfactory work performed by the night Supervisor. This overwhelming evidence produced by the management goes to show that this employee was working in a Supervisory capacity as held by the above authorities. Under the circumstances, I hold that Shri Mohinder Singh is not a workman as defined under section 2(s) of the Industrial Dispute Act.

ISSUE NO. 2:

As per finding given by me on issue No. 1, this issue needs no decision.

While answering the reference, I give my award that Shri Mohinder Singh is not entitled to any relief.

The 22nd January, 1981.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 96, dated 23rd January, 1981.

Forwarded, (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)81-8Lab/1172.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Swastika Engineering Works, Panipat:—

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
ROHTAK

Reference No. 112 of 77

between

SHRI YAMEEN, WORKMAN AND THE
MANAGEMENT OF M/S SWASTIKA
ENGINEERING WORKS, PANIPAT

Present:

Shri Harish Bagi for the workman.

Shri Surinder Kausal for the management.

AWARD

This reference No. 112 of 77 has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNL/174-A-77/46136, dated 14th October, 1977 under section 10(1)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between Shri Yameen, workman and the management of M/s Swastika Engineering Works, Panipat. The term of the reference was:—

Whether the termination of services of Shri Yameen was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties who appeared in response to the same on 9th November, 1977. The workman filed his statement of claim on the same day. In his claim statement the workman has stated that he was working with the respondent since 15th November, 1973 as Fitter. The respondent suspended him on 9th February, 1976 and terminated his services on 2nd September, 1976. The workman had filed a complaint for the non-payment of wages before the Labour Inspector and thereupon the management agreed to make the payment on 9th December, 1975 which was not paid. The workman then filed a claim before the Authority under Payment of Wages Act, Panipat, on 12th February, 1976 which was withdrawn by the union when the management made the disputed payment. In the domestic enquiry conducted against the workman the workman was not afforded the full opportunity to cross-examine the management witnesses. The workman complained against the enquiry officer against his partial attitude to the management. The workman filed an application before the enquiry officer for summoning his witnesses but they were not summoned. The workman was handed over a letter on 3rd August, 1976 on the gate of the factory by which it was revealed that the enquiry had been concluded. The workman replied this letter,—vide his dasti letter, dated 8th August, 1976. The workman again received a letter on 23rd August, 1976

which was replied on 24th August, 1976 wherein he protested against the one sided enquiry conducted by the management but the management did not give any reply to this letter and dismissed him from service on 2nd September, 1976. He has further alleged that on a false allegation one-sided enquiry was conducted resulting in illegal termination of his services.

The management filed their written statement on 3rd January, 1978 wherein they denied the allegation of the workman accerting therein that the workman was given full opportunity to give his defence and to participate in the enquiry but the workman avoided service of notices and on many occasions he did not sign the proceedings as a result of which registered notices were to be sent to him at his union address as well as his residential address by the enquiry officer which were received undelivered on number of occasions. The enquiry officer tried to accommodate him to his utmost and gave him dates after dates. On 15th May, 1976 the workman wanted time of 20 to 20 minutes to prepare himself to cross-examination of the witnesses produced by the management who were already examined by him on 27th March, 1976 and on his request the enquiry was adjourned to 19th June, 1976 for cross-examining the management witnesses. He was also supplied with the copies of the statements of the witnesses. On 26th May, 1976, the workman submitted an application for summoning of witnesses. The enquiry officer directed the management to produce the summoned witnesses on 26th May, 1976 but Shri Yameen the workman concerned refused to sign the proceeding. On 28th May, 1976 the witnesses summoned by the workman were present but Shri Yameen the workman was not present. Their statements were recorded. After recording their statements the enquiry officer closed the proceedings. The enquiry officer submitted his report, the management issued show-cause notice on 16th August, 1976,—vide registered post and gave three days time. The management waited up to 26th February, 1976 and when no reply was received his services were dismissed,—vide letter,

dated 26th August, 1976 and it was incorrect that the workman was dismissed on 2nd September, 1976. The management further contends that the enquiry held was proper and justified and the order of dismissal based on the enquiry report was legal and justified.

The workman filed his rejoinder on 1st February, 1978 where he contested the pleas of the management and the following issues were framed on the basis of the pleadings of the parties:—

Whether the termination of services of Ehri Yameen was justified and in order? If not, to what delief is he entitled?

The management examined Shri O. P. Vij, the enquiry officer as MW-1 and Shri Vinod Kumar, partner, as MW-2 as their witnesses. The enquiry officer who appeared as MW-1 has stated that the workman was provided full opportunity of cross-examination and defence. Enquiry proceedings is Exhibit M-10 running from page 1 to 15 consider the statements of witnesses and gave his findings which was Exhibit M-11. Documents placed on the file of the enquiry are Exhibit M-12 to M-33. In his cross-examination the witnesses has denied the suggestion of the workman that he was the standing lawyer of the management but infact he had charged fees for conducting the enquiry. The witness has also denied as incorrect the suggestion that he did not give opportunity to the workman to cross-examine the witnesses produced by the management in fact he supplied the copies of the statements and summoned two defence witnesses on the request of the workman. The defence witnesses were summoned for 28th May, 1976 and the date was conveyed to workman when he was present but the workman refused to sign the proceedings. On 19th May, 1976, the case was fixed for 26th May, 1976 and Yameen the workman had signed the proceedings on page 9, 10, 11 of the proceedings, dated 19th May, 1976 at point A, B, C, and D, respectively. It was made clear in the order, dated 19th May, 1976 that no other opportunity will be given to the workman and he was to produce his evidence on that

day in his office at 4-00 P.M. The allegation of the workman was false that he conducted a partial enquiry in collusion with the management.

MW-2 has deposed that on receipt of the report of the enquiry officer, Exhibit M-11 a show-cause notice was issued to the workman which is Exhibit MW-2/1. This letter was delivered to the workman and he signed the same in token of its receipt at point 'A'. He did not reply the show-cause notice and the dismissal order, Exhibit MW-2/2 was issued. He further stated that his services were terminated on the basis of the domestic enquiry. The earlier demand notice of the workman was rejected by the Government and this reference was made without providing them the opportunity of hearing.

The workman examined three witnesses WW-1 Sagir Ahmed who deposed that on 9th February, 1976 there was no quarrel between him and Yameen. There was union in our factory and Yameen was its Secretary and he did not make any complaint against Shri Yameen either in writing or in oral. In his cross-examination he has given out that the management terminated him in the year 1977. He has further stated that he is an illiterate person and knows only to put his signature. Initially he use to receive his pays by putting his thumb-mark and afterwards he began to sign. He admitted his signature on Exhibit M-10 at point 'X' and in the same breath he stated that he could not say whether there were or not his signature at Exhibit M-10. He further denied that he never appeared before the enquiry officer during the course of enquiry. He further stated that Yameen appeared before to enquiry office once in his presence but could not say whether it was prior to his termination or after. He has also given out that Yameen was related to him though a distant relation. He has further stated that it was in his knowledge that Yameen was charge-sheeted and the domestic enquiry was going on against him in respect of that charge-sheeted but he was not aware that

this enquiry was being conducted regarding his quarrel with Yameen. He came to know of this fact after 8 to 9 months of the termination of Yameen. He did not gave in writing to the management that there was no such quarrel between him and Yameen.

WW-2 Shri Ishwar Chand has stated that there was no union in the factory at the time when he was working there but they were trying to raise the same and Yameen was its Secretary. He has further stated that on 9th February, 1976 Yameen and Sagir Ahmed did not quarrel with each other nor Sagir told anything regarding such quarrel to him. In his cross-examination he has given out that he was a member of the union, the President and Secretary of which was Shri Yameen and 4 to 5 gate meeting were held by their union but nothing was brought in writing no election was held of their union. He has further stated that it was in his knowledge that a domestic enquiry was being conducted in the case of Shri Yameen. He came to know of this that a letter in this connection was received by Shri Yameen but he was not aware whether the enquiry was regarding the quarrel between Shri Yameen and Sagir. Again he stated that he and Yameen resided together and it was clear from the letter that the allegation was regarding the quarrel with Sagir. He has also stated that he did not give in writing to any one that there was no quarrel whatsoever occurred between Sagir and Yameen on the said date.

The workman appeared as WW-3 who deposed that Minimum Wages Act was not being fully implemented in the factory. He delivered a protest letter to the management. He was not allowed to be represented by the management. He received the intimation for enquiry on three occasions and he appeared in response to the same. He has further stated that he was not provided the opportunity to produce his defence. In his cross-examination he has given out that no letter was given to the management to show that he was the Secretary of the union. He has admitted his signature on almost all documents filed by the management during the

course of enquiry but he has stated that enquiry officer got them signed at one stretch and only at one time. The statements of the management witnesses in the enquiry were recorded by the enquiry officer and he wrote a letter to the enquiry officer to allow him to cross-examine the witnesses but he could not say whether those witnesses were recalled or not for this purpose. He has given out that he did not write any letter in the capacity of Secretary of the union to the management. He had no enmity with Shri Sagir Ahmed and Sagir Ahmed did not make a statement before the enquiry officer that Yameen did quarrel with him and it was wrong that he was terminated after holding a proper domestic enquiry.

I have heard the learned representative of both the parties and also have gone through the evidence oral as well as documentary available on the record carefully. I decide the issue as under:—

ISSUE NO. 1:

From the perusal of the enquiry proceedings it is apparent that the workman had been given opportunities even inspite of his non-co-operative attitude which could be considered as a sufficient reasonable opportunity. He had been served with a notice when he did not turn up on many occasions on the date fixed and a proceedings were not recorded *ex parte* when there was a reasonable cause to a proceed as such. The workman was allowed to cross-examine the management witnesses on his request who were already cross-examined by him on some earlier date. He was also allowed to produce his defence and the witnesses were also summoned as asked for by him but he did not avail of the opportunity provided to him. The contention of the workman as was stated by him in his notice of demand that he was not given the opportunity to produce his defence does not hold ground in the face of so many letters written to him which are placed on the file. The workman have made out different story in his statement of claim that he was terminated on a false allegation whereas in his notice of demand he had only pleaded that he

was not allowed the reasonable opportunity of defence. This twisting of the facts seems to be an after thought of the workman and in connivance with the WW-1 and WW-2 whose services were also terminated by the management. From the statements of these witnesses it is quite obvious that they admit the correctness of a fact and at the same vary moment they deny that very fact. WW-1 admits his signatures on Exhibit M-10 and in the same breath does not admit the same. He denies the fact that he ever appeared before the enquiry officer and in the very sentence to follow this he states that the workman appeared before the enquiry officer in his presence. He further denies that enquiry was being conducted against the workman in respect of the quarrel between him and Yameen and at the same time he admits that Shri Yameen was charge-sheeted and the fact was in his knowledge. Similary WW-2 has also given contradictory statements with regard to the allegation against the workman.

The workman has also pleaded that as he was President of the Industrial Workers Union branch Sawastike and he had raised demand through the union of the workers and the management took vegeance from him and dismissed him from service which amounted to victimisation but from the statement of the witnesses produced by the workman it has not been proved beyond doubt that if there was any union in the factory and the workman was either its Secretary or President. The workman has not been able to produce any letter written by him in these capacity either to the management or to the authorities. Mere bald statments cannot be relied upon. Even a suggestion regarding the victimisation of the workman on his being an activist of office-bearer of the union was everput to the management witnesses by the workman.

In view of the above observations I hold that the enquiry held by the management was fair and proper and was in accordance with the principles of natural justice where in the workman was allowed

the reasonable opportunities of cross-examination and defence and the same was not vitiated in any manner. The action of the management based on the finding of the enquiry officer is, therefore, justified and in order and the workman is not entitled to any relief either of reinstatement or of back wages. I answer the reference and return the same in these manner. The 23rd January, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 202, dated 27th January, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act. The 23rd January, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9 (1) 81—8Lab/1100 In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S Sehgal Puri Private Ltd. Mathura Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 172 of 1978.

Between

SHRI B. P. MANDAL WORKMAN AND THE MANAGEMENT OF M/S. SEHGAL PURI PRIVATE LTD., MATHURA ROAD, FARIDABAD.

Present :—

Shri P. K. De, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. FD/34-N-78/29769, dated 28-6-78 the Governor of Haryana referred the following dispute between the management of M/S. Sehgal Puri Private Ltd, Mathura Road, Faridabad and its workman Shri B. P. Mandal to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri B. P. Mandal was justified and in order? If not, to what relief is he entitled.

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were framed on 13-6-79 and the case was fixed for the management. The management was given many opportunities but they did not produce any. Then the case was fixed for the evidence of the workman, who also failed to produce any evidence.

This is a case of termination of service but the workman failed to establish his case, so much so, even he did not appear to make his own statement to prove his Statement of claim. Under such circumstances, I find that the workman is not entitled to any relief.

Dated : 22nd January, 81.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad

Endorsement No. 98 Dated : 23rd January, 81
Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

H. L. GUGNANI Comm and Secy.